

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMMA ROY BREEDING,

Plaintiff,

Hon. Paul L. Maloney

v.

Case No. 1:07 CV 971

NANCY LANGE, et al.,

Defendants.

REPORT AND RECOMMENDATION

Plaintiff initiated this action on September 27, 2007, asserting claims against numerous defendants. The Court has since dismissed Plaintiff's claims against all those defendants against whom service has been effected. For the reasons discussed below, the Court recommends that Plaintiff's claims against the lone remaining defendant, Jacklyn Jackson, be **dismissed** for failure to timely effect service.

On January 2, 2008, the Court ordered that service be effected on all defendants, including Defendant Jackson. The summons and complaint addressed to Defendant Jackson was returned unexecuted in February 2008. In the more than eighteen (18) months since, Plaintiff has never requested an extension of time to effect service on Defendant Jackson or otherwise requested the Court's assistance in identifying or effecting service on Defendant Jackson.

Federal Rule of Civil Procedure 4(c) indicates that "[a] summons must be served together with a copy of the complaint." The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant

within 120 days after the filing of the complaint, “the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant.” If the plaintiff demonstrates good cause for such failure, however, “the court shall extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *see also, Bush v. City of Zeeland*, 2003 WL 22097837 at *2 (6th Cir., Sep. 5, 2003) (citation omitted).

CONCLUSION

Considering Plaintiff’s lack of diligence, the Court recommends that Plaintiff’s claims against Defendant Jackson be **dismissed without prejudice for failure to timely effect service**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: September 17, 2009

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge